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May 21, 2018

*Submitted via email to [hq.foia@epa.gov](mailto:hq.foia@epa.gov); [white.elizabeth@epa.gov](mailto:white.elizabeth@epa.gov)*

Elizabeth White  
Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**Re: Freedom of Information Act No. EPA-HQ-2017-003479**

Dear Freedom of Information Officer and Ms. White:

My client, Ecological Rights Foundation (“EcoRights”), submitted a FOIA request on February 1, 2017, #EPA-HQ-003479. At EPA’s request, I engaged in a phone call with Becky Dolph on March 11, 2017 wherein EPA requested that EcoRights clarify the language of its request. On behalf of EcoRights, I agreed to EPA’s proposed clarifications out of a spirit of cooperation and in the hope that this agreement would help the search get underway promptly. When EPA still had not produced a final determination or any responsive documents to EcoRights more than 9 months later, EcoRights filed suit to compel production of the documents. This case is currently pending before the Honorable Judge Donna M. Ryu in the Northern District of California (Case No. 4:18-cv-00394).

It has only now come to my attention that EPA’s suggested clarifications to EcoRights’ February 1, 2017 FOIA request narrowed the scope of responsive documents so as to exclude pertinent documents of interest to EcoRights. EcoRights is dismayed that Ms. Dolph and EPA appears to have done so deliberately to avoid providing responsive documents in response to our request. During the March 11, 2017 phone call, Ms. Dolph appeared to well understand the topic that our FOIA request was intended to address and the nature of the documents sought--the memos, communications, and orders that would explain EPA’s media Gag Order and Political Review Order. She led me to believe that her suggested narrowing of the request would result in the pertinent EPA custodians with

complete access to and complete knowledge of the media Gag Order and Political Review Order performing adequate document searches and would thus lead to complete EPA document production. Upon re-reading Ms. Dolph's March 11, 2107 email message following our conversation, I think it is misleading. (I have attached the original FOIA request and the email memorializing the conversation re: clarifying the request for your convenience). I only agreed to the narrowing of our FOIA request discussed in Ms. Dolph's message because of her representations that the custodians she identified would have the documents that EcoRights indicated it wanted: the documents sufficient to explain whether EPA had in fact issued the Gag Order and Political Review Order and what these Orders entailed (including any further directions on how to implement these Orders). I did not agree that whatever documents EPA turned up in the narrowed search proposed by Ms. Dolph would necessarily suffice regardless of what the narrowed search in fact revealed—a fact potentially obscured by Ms. Dolph's message.

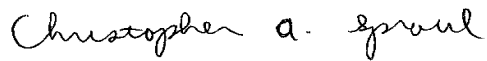
In response to litigation filed by EcoRights in the above mentioned case, EPA has now produced a document that it claims is outside the scope of the FOIA request as clarified, but yet appears to be the most relevant document responsive to EcoRights' February 1, 2017 request that has thus far been produced. This document is an email message sent by Joanne Amorosi, Communications Director, to directors in the Office of Administration and Resources Management. The email memorializes that all Communications Directors were briefed with restrictions to be placed on employees' ability to engage with press and the public, and that these restrictions would continue until further information is received from the Administration's Beach Team. I have attached the relevant EPA brief and document (Third White Decl. Ex. 5).

EPA claims that this document is not responsive to the FOIA request because neither Joanne Amorosi, the Communications Director, nor the other EPA employees who are directors in the Office of Administration and Resources Management, are the custodians identified in the clarified request, which was limited to "the Acting Administrator, the Administrator, the Acting Associate Administrator for Public Affairs or the Senior Press Advisor for Public Affairs."

EcoRights did not intend or anticipate that revising its request per Ms. Dolph's suggestion would preclude it from obtaining the most relevant responsive documents. At the time the conversation took place, EcoRights was in no position to know who within the agency should be identified as custodians with the most information on the Gag Order and Political Review Order. EcoRights could not have known who to identify because no documents had been released. Only EPA was in the position to know which people within the agency had been involved in the orders and directions to institute such policies. As such, EcoRights was at the mercy of EPA's suggestion. It appears now that EPA essentially tricked EcoRights into narrowing its request to exclude custodians with the most knowledge of the subject matter requested, so as to preclude disclosure of the documents.

Having now learned how EPA effectively narrowed EcoRights' request to exclude documents plainly at the heart of the subject matter of our request, it seems highly likely that there are still additional responsive documents that EPA has not released that are relevant to this subject matter. As such, EcoRights requests that EPA deem any narrowing of EcoRights' original FOIA request #EPA-HQ-003479 withdrawn and the request now reinstated in full, as originally drafted. If EPA is not amenable to this request, please treat this correspondence as a new FOIA request asking for the documents itemized in our original FOIA request #EPA-HQ-003479 (a copy of which is attached).

Sincerely,



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Christopher Sproul  
Counsel for Ecological Rights Foundation

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